Niaz A. Shah, ed. *Islam and the Law of Armed Conflict: Essential Readings*. Cheltenham (UK) and Northampton (US): Edward Elgar Publishing, 2015. Hardback. xviii + 866pp. ISBN: 978-1-78254-524-8.

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The post-9/11 world has placed a momentous burden on academics of Islam and contemporary issues to shed light on the concepts of external and internal armed conflict (*qital*) in Islamic law, the conduct of the Muslim state in war and peace—including the treatment of foreign representatives, prisoners, rebels, outlaws, non-Muslim citizens—and the relationship between all of the above and the modern norms of international law. *Islam and the Law of Armed Conflict: Essential Readings* is a hefty anthology—alas, unindexed—of 33 articles averaging 26 pages each and covering essential aspects of these issues. All contents were published between 2001 and 2013 except three articles: Noor Mohammad's 1985 'The Doctrine of Jihad: An Introduction' in the *Journal of Law and Religion*; Mahmood Ghazi's annotated translation of Muhammad al-Shaybani's *al-Siyar al-Saghir* (originally published in 1998 and not 2004 as stated); and Maryam Elahi's 1988 'The Rights of the Child under Islamic law: Prohibition of the Child Soldier' in the *Columbia Human Rights Law Review*, published in the last year of the Iran-Iraq war in which hundreds of thousands of Iranian child inductees lost their lives. The articles are distributed into five sections of decreasing size, respectively: I. 'Jihad: The Use of Force Under Islamic Law' (15 articles), II. 'Islamic Law of Qital (Armed Conflict)' (seven articles), III. 'Armed Conflict Among Muslims: Internal Armed Conflict' (six articles), IV. Peace and Security in Islam' (three articles), and V. Islamic Law and the Law of Armed Conflict (two articles). These articles were selected by University of Hull (UK) barrister-at-law Niaz A. Shah who is the author of three of them, respectively distributed into the first three sections, 'The Use of Force under Islamic Law' (23pp.), the luminous 'The Islamic Law of *Qital*' (29pp.) and 'The Islamic Law of *Qital* among Muslims' (11pp.), as well as a translation (see below) and an all-too-brief six-page preface.

The articles were written 'predominantly… by Muslim scholars based either in the West or in the Muslim world' and were chosen so as 'to counter the new interpretations of Islamic law the armed groups are seeking' as responses that 'must come from eminent Muslim scholars and must be based on Islamic sources' as well as 'to clarify that the interpretation offered by non-state armed groups is not the only interpretation of Islamic law' (p. xv). The collection includes the Taliban's own version of the Geneva Conventions (pp. 336-350, 'The Islamic Emirate of Afghanistan: A *Layeha* [Rules and Regulation] for *Muhajidin*,' translated by Niaz A. Shah). It offers useful insights into the post-Banna and post-Qutbian minimizations of the classical notions of spiritual jihad, the emergence of the concepts of the 'near and far enemies' and the subversion of the logic of defensive jihad as an individual duty (*fard 'ayn*) into a leaderless, stateless and ultimately do-it-yourself mandate to kill in jihadist writings, unbarred by distinctions of religion, borders, or civilian status (pp. 178-197 Nelly Lahoud, "The Pitfalls of Jihad as an Individual Duty"; pp. 106-108 on idealized intra-Muslim jihad according to Maududi and Khomaini). The indispensable role of the government or *imama kubra* is of course emphasized in the Qur'an (al-Nisa' 4:59, 4:83) and many hadiths as well as *fiqh* works (see Hamidullah, *Muslim Conduct of State*, section entitled 'Definition of war:' no war can be waged without permission of a central government according to Abu Yusuf, Sarakhsi and Mawardi; also Shah, pp. 102, 181).

The editor's leaning towards a sanitized view of jihad as purely defensive warfare (p. xvi), typified by its Shaltutian definitions in lofty terms as 'self-defence/establishing peace and resisting aggression' and 'establishing freedom of religion' (pp. 290, 326), is meant to counter its much more distorted current depiction as a purely aggressive and expansionist doctrine. 'During the first 22 years of Islam, the military dimension of jihad meant resistance to

aggression, in other words, self-defense.' (p. 70, M. Cherif Bassiouni, 'Evolving Approaches to Jihad From Self-Defense to Revolutionary and Regime-Change Political Violence'). '[T]he truth probably lies somewehere in the middle, and on a historical plane one might argue that [the] Islamic doctrine of war changed course in keeping with imperatives of time and circumstances' (p. 210, Shaheen Ali and Javaid Rehman's 'The Concept of *Jihad* in Islamic International Law'). 'Although early Sunni doctrine was that the military dimension of *jihad* was only for self-defense… most of [the] doctrines [developed by the four major Sunni schools] extend *jihad* to justifiable aggression, something akin to the contemporary doctrine of preemptive self-defence. The majority of the classical jurists stated *jihad* as both defensive and offensive…. [T]he aggressive nature of *jihad* dominated in the books of *fiqh* and was established as the classical doctrine… postulated at a time when the Islamic state was surrounded by others which [were] hostile and wanted to annihilate [it].' (p. 151, Abdul Ghafur Hamid, 'Islamic International Law and the Right of Self-Defense of States'). The latter context is key to the hair-raising agenda and self-fulfilling prophecy of sub-state jihadism today: the most effective call for a global, de-centred, offensive, uncontrolled and unpredictable *fard 'ayn* type of subversion can ensue only when every Muslim deems himself or herself targeted for annihilation by a hostile world, therefore every Muslim must be turned into such a target through endoctrination and action; conversely, let the non-Muslim world be conditioned to view every Muslim as a suspect or a culprit.

The term 'jihad' itself no longer needs to be put in italics as it has been for some time an English word validated both by the *OED* ('A religious war of Muslims against unbelievers in Islam, inculcated as a duty by the Koran and traditions') and the Webster's ('A holy war undertaken as a sacred duty by Muslims'). The problem is that contemporary discussants tend to reduce it to a substitute for whatever ideology they claim Islam promotes, from civilizational clash to pacifism. In the wake of its 21st-century abuses to glorify acts of mass murder by non-state actors, the j-word has now become the no. 1 recruitment slogan of the wealthiest and best organized sub-state armed group in the history of Islam, the no. 1 red flag of surveillance and security agencies, the no. 1 item on the to-bowdlerize list of well-thinking preachers and academes, and the bête noire of Orientalists and Islamophobes. A return to transparency requires a reassertion of its primary sense: 'A Muslim's combating of a non-treaty unbeliever for the enhancement of the word of God, or being present and ready thereat for the said purpose, or entering the non-treaty unbeliever's territory for it' (Ibn 'Arafa, *Hudud*); 'The expense of ability and power in fighting in the path of God by means of one's life, property, tongue and other than these' (Kasani, *Bada'i' al-sana'i'*, Book of *Siyar*). Its spiritual sense, furthermore, also looms large ('Nevertheless, the spiritual aspects of jihad were prevalent' Shah, p. 70), but in moral literature rather than law: "The most perfect of people in guidance are the greatest of them in jihad, and the most obligatory jihad is the jihad agains one's own soul, and the jihad against lust, and the jihad against the devil, and the jihad against the world…. None can achieve ability to wage jihad against his external enemy except one who wages it against these internal ones" (Ibn al-Qayyim, *al-Fawa'id*). At the same time, as Bassiouni states, 'the history of Islam is characterized by recurring violence claimed to be justified by jihad, even when it was not. To argue otherwise is revisionist history' (Shah, p. 90).

The collection offers much-needed discussions of related categories which in recent times have been equally over-simplified to the point of misrepresentation, such as the types of warfare in Islam (pp. 406; 557-565, Niaz Shah, 'The Islamic Law of *Qital* among Muslims'); POWs (pp. 402-416, '*Jihad*'s Captives: Prisoners of War in Islam' by Langley Air Force Base, Virginia intelligence officer Troy Thomas who concludes, 'the Islamic law governing POWs is both well-developed and generally humane'); the just war tradition (pp. 288-323, 744-754; 847-866); *dhimma*, *jizya*, safe conduct and treaties (pp. 288-323; 374-377; 542-552, Mohammad Kamali, '*Dhimmi* and *musta'min*: A juristic and historical perspective' which

concludes that ‘in today’s world and in the context of the prevailing balance of economic power… the Muslims are the real dhimmis’; 803-804); retaliation and proportionality (pp. 171-172, 306-308, 357-358) and the Islamic categorization of world ‘abodes’ as not only that of submission and war (*dar al-Islam, dar al-harb*) but also of peace, truce and covenant (*dar al-sulh, dar al-amn, dar al-‘ahd*), government control or rebel control (*dar al-‘adl, dar al-baghy*), security and transgression (*dar al-salam, dar al-jawr*) and non-aggression/neutrality (*dar al-hayad*) (pp. 180, 210-212, 289, 405, 465, 529-541, 650-664). The latter concept, notably elaborated by Zuhayli and Qaradawi—two contemporary jurists who wrote on *wasatiyya* and also each authored massive compendia on the *fiqh* of jihad—serves to refute the claim by Majid Khadduri (whose *Islamic Law of Nations* sadly ‘now forms the basis for contemporary *siyar*’ p. 404) and Islamophobes that the normal state of Islamic polity vis-à-vis the rest of the world is war and the quest for world domination (pp. 150, 311, 541, 749). More soul-searching is also needed on one of the most fundamental questions, namely the identity of the larger body of Muslims, in terms of international law today: Muslims are members of an ongoing *Umma* but also citizens of separate UN signatory nation-states and representatives of a civilization of religious universalism in contradistinction with civilizations of secular-humanist universalism and anti-theism (‘Islam and international humanitarian law: From a clash to a conversation between civilizations’ by James Cockayne, International Crime Branch of the Australian Attorney-General’s Department, pp. 817-845).

The three longest articles in this collection recommend themselves as must reading for a variety of reasons which can be cited only very briefly. The first is Mahmood Ahmad Gazi’s English translation (from his own edition of the Arabic text) of Muhammad b. al-Hasan al-Shaybani’s *Kitab al-Siyar al-Saghir* (pp. 417-484), a work Gazi described as epitomizing the genesis of Muslim international law (after Muhammad Hamidullah, who had described Sarakhsi’s commentary on Shaybani’s larger and possibly later work, the *Siyar al-Kabir*, as the first ever treatise on international law in his integral French translation published in Istanbul in 1989). The second is Ahmed al-Dawoody’s ‘Internal Hostilities and Terrorism’ (pp. 596-645) which sheds light on the relationship between some of the contemporary classifications of state, law and legal doctrine with key classical Islamic concepts of law, justice, stability and security; unfortunately all of its 300 notes are missing! The third is Naveed Sheikh’s eye-opener entitled ‘Body Count: A Comparative Quantitative Study of Mass Killings in History’ (pp. 677-726), a statistical overview of world genocides and democides in all recorded history, which shows the far lower death toll of Islamic civilization in comparison to the Christian world (responsible for the highest number of deaths in world history and more than half of all genocides), the Antitheist world (second in both categories), Sinic civilization (third in both categories) and the Buddhist world (whose world death toll is almost three times that of the Islamic). This is a vindication of what was already observed by Muhammad Hamidullah in his *Battlefields of the Prophet* with regard to the comparatively self-controlled spirit of Islamic expansion ‘from some of the streets of Madina to some three million square kilometers, an area as big as [continental] Europe minus Russia’ in the ten final years of the Prophet’s mission ‘at a cost of less than 250 men killed on the battlefields on the enemy side’; by Gai Eaton, that ‘no rivers flowed with blood, no fields were enriched with the corpses of the vanquished… They were on a leash. There were no massacres, no rapes, no cities burned…. [T]here had never been a conquest like this’ (*Islam and the Destiny of Man*, 1994, p. 30, cited on p. 209); and by even an enemy of Islam such as Gustave Le Bon, who conceded in his *Civilization of the Arabs* that ‘History has never known more merciful nor more just a conqueror than the Arabs.’ The latter phrase became one of three epigraphs our late teacher Dr. Wahba al-Zuhayli chose for his 900-page doctoral thesis, *Aathaar al-harb fil-fiqh al-Islami: dirasa muqarana* (1963).

Sheikh’s article is part of a 2009 book published and made freely available online by the Royal Aal al-Bayt Institute for Islamic Thought entitled *War and Peace in Islam: The Uses*

and Abuses of Jihad, ed. HRH Prince Ghazi bin Muhammad et al. which opens with a re-translation by Lamya Al-Khraisha—partly reproduced as the first two articles in Shah's anthology (pp. 3-41)—of Shaykh Mahmud Shaltut's landmark work *al-Qur'an wal-Qital* under the title *The Qur'an and Combat*. Shah might have reproduced this text in full as it is the clearest exposition to date of the non-coercive nature of the religion of Islam. The 'Fatwa on Jihad' by Shaykh 'Ali Gomaa the former Grand Mufti of Egypt (pp. 324-335) is also excerpted from the above-mentioned book; Gomaa remarks (p. 335) that the best Arabic term for terrorism, rather than *irhab* (a Quranic cognate that means deterrence), should be *irjaf* (also Quranic in the sense of subversion and scaremongering). Another notable but as of yet untranslated Azhari contribution is Shaykh Jad al-Haqq 'Ali Jad al-Haqq's refutation of *al-Farida al-gha'iba* (The Neglected Duty) by Muhammad 'Abd al-Salam Faraj, the main ideologue of 'jihad as the *fard 'ayn* of our time' (see Shah, p. 184) and mastermind of Sadat's assassination. Faraj's book was translated and published by MacMillan in 1986. Shaltut's text was first translated as *The Koran and Fighting* by Rudolph Peters as part of his monograph *Jihad in Medieval and Modern Islam* (Brill 1977) and republished within his book-length *Jihad in Classical and Modern Islam* (Markus Wiener 1996). Peters' analysis of the texts is in line with that of Roda Mushkat, James Busuttil, Khadduri, Bernard Lewis, Abdullahi An-Na'im and others who promote the construct of an offensive jihad/perpetual war against all non-Muslims for world domination versus modernist denial of all but a defensive/peaceful or even spiritual jihad (see Shah, pp. 198-220, Ali and Rehman's 'Concept of *Jihad*' and pp. 288-323, Hilmi M. Zawati, 'Jihad and International Relations'). Such tendentious over-simplifications were transcended in Richard Bonney's 600-page *Jihad: From Qur'an to Bin Laden* (2004) and Michael Bonner's 200-page *Jihad in Islamic History* (2008). Peters, Bonney and Bonner also offer 'essential readings' on the issues but I have not seen the latter two mentioned by Shah's contributors. Equally unreferenced in this collection but more in line with Shah's approach is our teacher Shaykh Muhammad Hisham Kabbani's 133-page monograph published in 2010 by the Islamic Supreme Council of America entitled *Jihad: Principles of Leadership in War and Peace*.

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